

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

re: German  
29331

**FILE:** B-212547

**DATE:** September 17, 1984

**MATTER OF:** Aero Mayflower Transit Company, Inc.

**DIGEST:**

Where applicable rate tender provides for the use of lower net scale weight to determine freight charges, higher net weight based on reweigh may not be used on the basis of alleged extenuating circumstances where the carrier has provided no plausible basis for its contention that the reweigh would properly compensate for the extenuating circumstances, nor has the carrier shown any legal basis for disregarding the explicit terms of the tender.

Aero Mayflower Transit Company, Inc. (Mayflower), requests review of settlement action taken by the General Services Administration (GSA) denying \$1,096.51 in additional transportation charges based on a reweigh of a shipment of household goods which Mayflower transported from Anchorage, Alaska, to Tyndall Air Force Base, Florida, under government bill of lading No. S-0656711. GSA denied Mayflower's claim on the basis that the applicable tender requires that the transportation charges be based on the lower weight. Mayflower concedes that the tender requires it to bill on the basis of the lower weight, but contends that there are extenuating circumstances.

We sustain GSA's audit action.

The empty tractor-trailer was weighed at 27,420 pounds (tare weight) in Anchorage, Alaska, on December 30, 1982, the same date on which the shipment of household goods was loaded. The loaded tractor-trailer was then weighed in Anchorage, Alaska, on January 2, 1983, at 31,800 pounds (gross weight), establishing the weight difference of 4,380 pounds as the net weight of the shipment for billing purposes.

Upon arrival at the storage-in-transit (SIT) warehouse at Panama City, Florida, on February 11, 1983, the line haul driver noted that the shipment occupied over 1,000 cubic feet of van space and questioned the origin, Anchorage, net scale weight. The shipment was reweighed at a net scale weight of 5,390 pounds based on a 37,290-pound

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gross weight and a 31,900-pound tare weight. Because of the large difference of 1,010 pounds between the origin and SIT net scale weights, a second reweigh was requested by the SIT warehouseman. This reweigh resulted in a 5,620-pound net scale weight, based on a gross weight of 22,650 pounds and a tare weight of 17,030 pounds. Different vehicles were used for each of the three weighings. Mayflower then filed a claim for \$1,096.51 in additional freight charges based on use of the lower of the SIT reweigh figures (5,390 pounds) to establish the weight of the shipment for billing purposes.

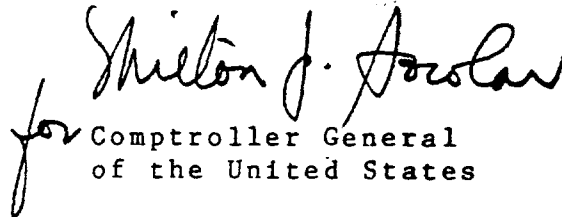
Mayflower contends that this reweigh figure should be used because of extenuating circumstances. Mayflower argues that National Weather Service records show that there was precipitation of 1 inch of freezing rain in Anchorage on December 30, 1982, followed by 2 days without precipitation and with above freezing temperatures. Therefore, Mayflower hypothesizes that ice could have accumulated on the trailer before it was weighed on December 30, to establish the tare weight, and the ice could have melted prior to the January 2 weighing in Alaska which established the gross weight. Mayflower asserts that these extenuating circumstances warrant the use of the lower of the two Florida SIT reweighs to establish the correct net weight for billing purposes.

GSA does not dispute the possible effect on net weight of the hypothetical ice accumulation. However, GSA points out that under item 105 of Military Rate Tender 20-G, the applicable tender, "the lower of two net scale weights" must be used to determine shipping charges. In this instance, as Mayflower concedes, this means that the 4,380-pound net weight as determined by the Anchorage weighings applies under the tender.

We agree with GSA's interpretation of the tender, and the carrier has not provided any legal basis for ignoring the tender terms because of extenuating circumstances. In addition, we fail to see the logic of Mayflower's proposed use of the Florida SIT reweigh. Even if there was some discrepancy in the net weight as determined by the Anchorage weighings because of inclusion and exclusion of ice accumulation, we note that the discrepancy probably resulted from the delay in weighing during a period in which Mayflower had care and custody of the trailer. Moreover, the two SIT reweighs differ by 230 pounds with

respect to net weights, a discrepancy for which Mayflower offers no explanation. In addition, Mayflower has not offered any direct evidence with respect to the ice accumulation on the trailer, relying solely on inferences derived from Anchorage weather conditions. In this regard, we note that there is no indication whether the Anchorage precipitation occurred before, during or after the weighing which was used to establish the tare weight. Under these circumstances, we do not believe that Mayflower has established any basis for deviating from the tender terms due to "extenuating circumstances," particularly in view of the fact that Mayflower concedes GSA's interpretation of the relevant tender provision and offers no legal basis for ignoring or varying the provision. Accordingly, the carrier has failed to meet its burden of proving the correctness of its claim and its right to payment under the contract of carriage. United States v. New York, New Haven & Hartford RR Co., 355 U.S. 253, 262 (1957); Ultra Special Express, 55 Comp. Gen. 301, 304 (1975); 51 Comp. Gen. 208, 214 (1971).

We sustain GSA's audit action.

  
for Comptroller General  
of the United States